

TITLE 89: SOCIAL SERVICES
CHAPTER I: DEPARTMENT OF PUBLIC AID
SUBCHAPTER a: GENERAL PROVISIONS

PART 104
PRACTICE IN ADMINISTRATIVE HEARINGS

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AUTHORITY: Implementing Sections 11-8 through 11-8.7, 12-4.9 and 12-4.25 and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/11-8 through 11-8.7, 12-4.9, 12-4.25 and 12-13].

SOURCE: Filed and effective December 30, 1977; emergency rule at 2 Ill. Reg. 11, p. 151, effective March 9, 1978, for a maximum of 150 days; amended at 2 Ill. Reg. 21, p. 10, effective May 26, 1978; amended at 2 Ill. Reg. 33, p. 57, effective August 17, 1978; peremptory amendment at 3 Ill. Reg. 11, p. 38, effective March 1, 1979; amended at 4 Ill. Reg. 21, p. 80, effective May 8, 1980; peremptory amendment at 5 Ill. Reg. 1197, effective January 23, 1981; amended at 5 Ill. Reg. 10753, effective October 1, 1981; amended at 6 Ill. Reg. 894, effective January 7, 1982; codified at 7 Ill. Reg. 5706; amended at 8 Ill. Reg. 5274, effective April 9, 1984; amended (by adding Sections being codified with no substantive change) at 8 Ill. Reg. 16979; amended at 8 Ill. Reg. 18114, effective September 21, 1984; amended at 10 Ill. Reg. 10129, effective June 1, 1986; amended at 11 Ill. Reg. 9213, effective April 30, 1987; amended at 12 Ill. Reg. 9142, effective May 16, 1988; amended at 13 Ill. Reg. 3944, effective March 10, 1989; amended at 13 Ill. Reg. 17013, effective October 16, 1989; amended at 14 Ill. Reg. 18836, effective November 9, 1990; amended at 15 Ill. Reg. 5320, effective April 1, 1991; amended at 15 Ill. Reg. 6557, effective April 30, 1991; amended at 16 Ill. Reg. 12903, effective August 15, 1992; amended at 16 Ill. Reg. 16632, effective October 23, 1992; amended at 16 Ill. Reg. 18834, effective December 1, 1992; emergency amendment at 17 Ill. Reg. 659, effective January 7, 1993, for a maximum of 150 days; amended at 17 Ill. Reg. 7025, effective April 30, 1993; amended at 18 Ill. Reg. 11260, effective July 1, 1994; amended at 19 Ill. Reg. 1321, effective January 30, 1995; emergency amendment at 19 Ill. Reg. 10268, effective July 1, 1995, for a maximum of 150 days; emergency amendment at 19 Ill. Reg. 15521, effective October 30, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 15711, effective November 6, 1995; amended at 20 Ill. Reg. 1229, effective December 29, 1995; amended at 20 Ill. Reg. 5699, effective March 28, 1996; amended at 20 Ill. Reg. 14891, effective November 1, 1996; emergency amendment at 21 Ill. Reg. 8671, effective July 1, 1997, for a maximum of 150 days; emergency amendment at 21 Ill. Reg. 9306, effective July 1, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 13648, effective October 1, 1997; amended at 21 Ill. Reg. 14977, effective November 7, 1997; emergency amendment at 22 Ill. Reg. 17113, effective September 10, 1998, for a maximum of 150 days; amended at 23 Ill. Reg. 2393, effective January 22, 1999; emergency amendment at 23 Ill. Reg. 11734, effective September 1, 1999, for a maximum of 150 days; amended at 24 Ill. Reg. 2418, effective January 27, 2000; amended at 25 Ill. Reg. 5351, effective April 1, 2001; amended at 26 Ill. Reg. 9836, effective June 26, 2002; emergency amendment at 26 Ill. Reg. 11022, effective July 1, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 12306, effective July 26, 2002; amended at 26 Ill. Reg. 17743, effective November 27, 2002; amended at 27 Ill. Reg. 5853, effective March 24, 2003; amended at 27 Ill. Reg. 13771, effective August 1, 2003; amended at 28 Ill. Reg. 2735, effective February 1, 2004; emergency amendment at 29 Ill. Reg. 2735, effective February 7, 2005, for a maximum of 150 days; amended at 29 Ill. Reg. _____, effective June 30, 2005.

SUBPART A: ASSISTANCE APPEAL

Section 104.1 Assistance Appeals

Sections 104.10 through 104.70 apply to all appeals before the Department filed by or in behalf of applicants or recipients of public assistance under the Temporary Assistance for Needy Families (TANF), Aid to Families with Dependent Children Program (AFDC), Aid to the Aged, Blind, or Disabled Program (AABD), General Assistance Program (GA), Medical Assistance Program, or Food Stamp Program, as administered by the Department.

(Source: Amended at 21 Ill. Reg. 13648, effective October 1, 1997)

Section 104.10 Initiation of Appeal Process

- a) For General Assistance outside the city of Chicago, the appeal process is initiated by filing a written, signed request with the Public Aid Committee.
- b) For all other appeals, the appeal process is initiated by either:
 - 1) filing a written, signed request with the Assistance Hearings Section;
 - 2) filing a written, signed request with the respective local office; or
 - 3) telephoning a request to the Assistance Hearings Section's tollfree number for filing appeals.
- c) For purposes of initiating the appeal process, a facsimile of a written, signed request for a fair hearing is considered the same as the original written, signed request.
- d) A food stamp appeal may also be initiated by an oral request to the Department.

(Source: Amended at 20 Ill. Reg. 14891, effective November 1, 1996)

Section 104.11 Pre-Appeal Review

- a) Upon the initiation of an appeal, the Department shall immediately conduct an informal review of the action or inaction which has served as the basis for the appeal and, if indicated, reverse or modify its decision or take other action, as necessary.
- b) If the appellant does not withdraw the appeal following the informal review, the Department shall complete a statement of facts supporting its action or inaction.

(Source: Amended at 6 Ill. Reg. 894, effective January 7, 1982)

Section 104.12 Notice of Hearing

- a) The Department shall send written notice to all parties of the time, date and place of the hearing.
- b) The written notice for food stamp hearings shall be provided at least 10 days prior to the hearing.

(Source: Peremptory amendment at 3 Ill. Reg. 11, p. 38, effective March 1, 1979)

Section 104.20 Conduct of Hearings

- a) All hearings will be conducted in the county in which the appellant resides. However, if the appellant is outside the state, the hearing officer may take depositions from him and his witnesses or permit the appellant to present all relevant matter in support of his claim through witnesses acting in his behalf, or both by deposition or testimony of witnesses, depending upon the circumstances in each case.
- b) All hearings will be conducted by:
 - 1) An impartial hearing officer authorized by the Director of the Department to consider issues under appeal by AABD, AFDC, Food Stamp, AMI, or MANG clients, or GA clients in the City of Chicago. The hearing shall be conducted in the county in which the appellant resides or another county acceptable to the appellant.
 - 2) A Public Aid Committee for GA appeals outside the City of Chicago.
- c) The hearing shall be open to such persons as the hearing officer or the Public Aid Committee (of a local governmental unit which receives State funds) deems necessary and proper for its orderly and efficient conduct.

(Source: Amended at 8 Ill. Reg. 18114, effective September 21, 1984)

Section 104.21 Representation

- a) The appellant may represent himself at the hearing or may be represented by legal counsel or other authorized representative and need not be present at the hearing. Action or inaction of an authorized representative shall be deemed to be action or inaction of the appellant.
- b) If the appellant is not present at the hearing, a written, signed authorization designating the representative to serve in said capacity shall be required if:
 - 1) the representative is an employee, agent, or representative of a hospital;
 - 2) the representative is an employee, agent, or representative of a group care facility; or
 - 3) the hearing officer, in his judgment, has reason to question the representative's authority to serve in said capacity.
- c) If written authorization is not available at the hearing, it shall:
 - 1) Be presented to the hearing officer within two working days subsequent to the adjournment of the hearing.
 - 2) If, in the judgment of the hearing officer, circumstances warrant a period greater than two days for presentation of written authorization, the time period established by the hearing officer shall be controlling.
 - 3) If the authorization is not received within the time period provided it shall be deemed a non-appearance and dismissed pursuant to Section 104.60.

(Source: Amended at 5 Ill. Reg. 10753, effective October 1, 1981)

Section 104.22 Appellant Participation in Hearing

The appellant and/or his representative shall have the opportunity to:

- a) Examine the appellant's case record and obtain copies of case record material upon payment of a charge for reproduction. For food stamp appeals, copies of the parts of the case record which are relevant to the hearing shall be provided free if requested by the appellant or authorized representative.
- b) Present evidence and witnesses in their behalf.
- c) Refute testimony or other evidence and cross-examine witnesses.

(Source: Peremptory amendment at 3 Ill. Reg. 11, p. 38, effective March 1, 1979)

Section 104.23 Evidentiary Requirements

The hearing shall not be bound by common law or statutory rules of evidence, or by technical or formal rules of procedure, but shall be conducted in a manner best calculated to conform to substantial justice.

Section 104.30 Subpoenas

- a) Subpoenas may be requested by the appellant and/or his representative prior to and/or at the hearing. Subpoenas may be granted at the discretion of the hearing officer.
- b) The hearing officer may defer ruling on a request for a subpoena until after available evidence has been gathered and heard at the hearing.

Section 104.35 Amendment of Appeal

A request to amend an appeal may be made in writing prior to the hearing, or at the hearing. The appeal may be amended only if, in the judgment of the hearing officer, the amendment is germane to the subject matter of the original request for an appeal hearing.

Section 104.40 Consolidation of Appeals

- a) The Department may consolidate a number of individual appeals for the purpose of conducting a single group hearing if it is determined that all of the appeals involve the same complaint, and the only issue in question is one of:
 - 1) State or Federal law or policy, or changes in State or Federal law or policy by AABD, AFDC, or MANG appellants.
 - 2) State law or policy, or changes in State law or policy by GA or AMI appellants.
- b) Each appellant may, at his option, withdraw from the group and present his appeal individually.

Section 104.45 Postponement or Continuation of Hearings

- a) The Department may postpone or continue a hearing as provided in this Section. As used in this Section, a "postponement" is a decision not to convene the hearing on its scheduled date and a "continuance" is a decision not to proceed with a hearing that has convened.
- b) A request to postpone or continue a hearing may be made prior to or at the hearing, and should be made as soon as the party or representative becomes aware that good cause might exist for either not appearing for, or not proceeding with, the hearing. See subsection (b)(2) for what constitutes "good cause."
 - 1) All requests for postponement made prior to the hearing must be directed to the Assistance Hearings Section. Except for the first postponement at the appellant's request of a food stamp appeal, all requests for postponement made prior to the hearing must be in writing.
 - 2) The first postponement or continuance at the appellant's request of a food stamp appeal does not require a showing of good cause. All other requests for postponement made prior to the hearing ordinarily will be granted in advance of the hearing only when the party or representative shows that he has good cause for not appearing for that hearing for reasons such as illness or similar circumstances beyond his reasonable control.
 - 3) At the hearing, the hearing officer may grant a request to continue the hearing when the party or representative shows that good cause exists for not proceeding with the hearing. If the request to continue the hearing is based on the unavailability of witnesses and/or documentary evidence, the hearing officer may defer ruling on the request until after the available evidence on the issues of the case has been presented.
- c) Absent notice from the Assistance Hearings Section granting a postponement of the hearing, the appellant and/or his representative will be expected to appear for that hearing. If a request to postpone or continue a hearing is not granted and the appellant and/or his representative does not appear for or refuses to proceed with the hearing, the appeal will be dismissed in accordance with Section 104.60.
- d) If the request for a continuance or postponement is granted, the Assistance Hearings Section shall schedule a hearing as early as is reasonably practicable and shall notify the parties of the new date, time and place of the hearing.

(Source: Amended at 15 Ill. Reg. 5320, effective April 1, 1991)

Section 104.50 Withdrawal of Appeal

An appeal may be withdrawn by the appellant and/or his authorized representative either prior to or at the hearing. A withdrawal must be in writing and signed by the appellant and/or representative, or on the record during the hearing.

Section 104.55 Closing of Hearing Record

At the adjournment of the hearing, the record shall be closed and no further evidence may be submitted by the Department or the appellant unless, prior to the adjournment of the hearing, a request to leave the record open for a specified period for the submittal of additional evidence was made by the Department and/or the appellant and granted by the hearing officer.

Section 104.60 Dismissal of Appeal

- a) In the event appellant and/or his authorized representative does not appear at the time, date and place designated for the hearing, the appeal shall be deemed abandoned and shall be dismissed.
- b) Refusal of the appellant and/or his authorized representative to proceed with the hearing shall be deemed a non-appearance, and the appeal shall be deemed abandoned and shall be dismissed.
- c) The appellant and/or his authorized representative shall be informed of the dismissal by written notice.
- d) Request to vacate a dismissal must be in writing and signed by the appellant and/or his authorized representative. Such requests must be received by the Department not more than 10 calendar days subsequent to the date of the dismissal notice.
- e) Dismissals shall be vacated only if good cause for non-appearance is shown. Good cause is defined as:
 - 1) death in the family,
 - 2) personal injury or illness which reasonably prohibits the appellant from attending the hearing, and/or
 - 3) sudden and unexpected emergencies.
- f) Disposition by dismissal is a Final Administrative Decision.

Section 104.70 Final Administrative Decision

- a) Following the hearing, a Final Administrative Decision will be made by the Director of the Department which either upholds or does not uphold the appealed action or determines that the Department lacks jurisdiction. A copy of the decision shall be mailed to the appellant and his authorized representative, if any.
- b) A decision on appeal shall be given the interested parties within 60 days from the date of the filing of the appeal unless additional time is required for a proper disposition of the appeal in AABD, AFDC, MANG, Food Stamp, GA, and AMI cases.
- c) When the appealed action is not upheld, the Department shall take appropriate action, in accordance with the decision, including authorization of retroactive assistance benefits, if necessary.
- d) Appropriate action implementing the results of the decision shall be taken within 90 days from the date of initiation of the appeal, extended by any delay in the hearing caused by the appellant. In Food Stamp cases, if the decision results in an increase in household benefits, the increase shall be reflected in the coupon allotment within 10 days of receipt of the hearing decision. If the decision results in a decrease of food stamp benefits, the decrease shall be reflected in the next scheduled issuance following receipt of the hearing decision.
- e) When an appellant whose assistance has been continued unchanged as a consequence of a request for a hearing does not appear at a scheduled hearing, and fails to advise the Department or Public Aid Committee of his inability to attend, the Department shall proceed with the planned change in assistance/food stamp benefits, unless the Department determines that there was good cause as defined in Section 104.60 for the non-appearances.
- f) If an appellant dies before the date of hearing, the appeal process may be pursued by someone acting responsibly in the appellant's behalf.
- g) Once a final decision is released by the Department or Committee, it is reviewable only through the Circuit Courts of the State of Illinois.
- h) No petition for rehearing or reconsideration is allowed. Neither the filing of any such motion, or correspondence in the nature of such a motion, nor any response by the Department to such correspondence or motion will delay the time for filing of a complaint in the Circuit Court.

(Source: Amended at 16 Ill. Reg. 16632, effective October 23, 1992)

Section 104.80 Public Aid Committee

In each county a Public Aid Committee to consider appeals shall be with the following composition:

- a) In counties under township organization (except Cook County), the Committee shall consist of the Chairman of the County Board and four County Board members.
- b) In Cook County, the Public Aid Committee shall consist of five Supervisors of General Assistance appointed by the President of the Cook County Board of Commissioners from townships outside the City of Chicago.
- c) In Commission form counties, the Public Aid Committee shall consist of the County Board of Commissioners.

(Source: Amended at 6 Ill. Reg. 894, effective January 7, 1982)

SUBPART B: RESPONSIBLE RELATIVE AND JOINT PAYEE PETITIONS**Section 104.100 Support Order, Responsible Relative and Joint Payee Petitions**

Sections 104.101 through 104.104 apply to all petitions of responsible relatives and clients for release from or modification of Administrative Support Orders and to all petitions of responsible relatives to contest determinations of the amount of past-due support or of the share of jointly-owned funds (see 89 Ill. Adm. Code 160.70), or to contest withholding, or to modify, suspend, terminate, or correct terms contained in administrative income withholding notices (see 89 Ill. Adm. Code 160.60(d)(6)); except that Section 104.110 shall apply to all petitions of joint owners of personal property and accounts held in financial institutions where the personal property and accounts are subject to levy under 89 Ill. Adm. Code 160.70(g)(2).

(Source: Amended at 24 Ill. Reg. 2418, effective January 27, 2000)

SUBPART B: RESPONSIBLE RELATIVE AND JOINT PAYEE PETITIONS

Section 104.101 Petition for Hearing

- a) Any client or responsible relative aggrieved by an administrative support order entered, or any responsible relative aggrieved by a determination of past-due support or determination of the share of jointly-owned funds made by the Department may petition for a hearing for release from or modification of the order or to contest the determination.
- b) The petition under subsection (a) above shall be filed within 30 days after the date of mailing of such order or determination. The day immediately subsequent to the mailing of the order or determination shall be considered as the first day; and the day such petition is received by the Department shall be considered as the last day in computing the 30 day appeal period.
- c) Any responsible relative in a case with an administrative support order may petition the Department for a hearing to contest withholding, or to correct a term contained in an income withholding notice or a National Medical Support Notice, or to modify, suspend or terminate an income withholding notice or a National Medical Support Notice for the reasons provided in 89 Ill. Adm. Code 160.75(d), (e), (j) and (n).
- d) The petition to modify, suspend, terminate, or correct a term contained in an income withholding notice may be filed at any time and the petition to contest withholding or the National Medical Support Notice, shall be filed within 20 days after the date of service of the copy of the income withholding notice or the National Medical Support Notice upon the responsible relative. The day immediately subsequent to the day of service of the copy of the notice shall be considered as the first day; and the day such petition is received by the Department shall be considered as the last day in computing the 20 day appeal period.
- e) The Department shall, upon receipt of a petition, provide for a hearing to be held, except as provided in Section 104.103(b).

(Source: Amended at 29 Ill. Reg. _____, effective June 30, 2005)

Section 104.102 Conduct of Administrative Support Hearings

- a) Hearing De Novo
 - 1) The hearing shall be de novo and the Department's determination of liability or non-liability pursuant thereto shall be independent of the prior determination of liability.
 - 2) In Title IV-D cases, the hearing shall only consider such matters as are relevant for a determination of the duty and financial ability to support under 89 Ill. Adm. Code 160.60 and 160.65.
- b) Rules Governing Hearing
 - 1) Hearings on petitions for release from or modification of the Administrative Support Order shall be governed by Sections 104.10 through 104.70, except that "appellant" as used within this Part shall refer to the responsible relative or Title IV-D client who petitions and except as set out in subsection (b)(2) of this Section.
 - 2) In Title IV-D cases, the following additional rules shall govern:
 - A) A request for appeal must be filed with the regional or central office of the Division of Child Support Enforcement at the address furnished in the administrative support order.
 - B) For purposes of notice and of presenting evidence, the Title IV-D client and the responsible relative shall be considered interested parties.
 - C) Hearings shall be conducted by a hearing officer authorized by the Director of the Department to consider issues under appeal by Title IV-D clients and responsible relatives.
 - D) In the event of cross appeals, if the client is an Illinois resident, the hearing shall be held in the client's county of residence. Otherwise, if the appellant is an Illinois resident, the hearing shall be conducted in the appellant's county of residence. If the appellant is not an Illinois resident but the client is an Illinois resident, the hearing shall be conducted in the client's county of residence. If neither the appellant nor the client is an Illinois resident, the hearing shall be conducted in the appropriate regional office of the Division of Child Support Enforcement. In any event, the hearing may be conducted in a county acceptable to the appellant, the client, and the Division of Child Support Enforcement. If a party is outside the State, he or she may, in a manner consistent with Section 11-8.2 of the Public Aid Code [305 ILCS 5/11-8.2], present his or her case through depositions and witnesses. In addition, a party may request to participate in the hearing by telephone, at his or her own expense.
 - E) Documents certified by a clerk of court or a Title IV-D agency

- shall be admitted into evidence without further proof. (Refer to Section 104.23 for admission of other evidence.)
- F) In addition to the appellant, the Division of Child Support Enforcement or Title IV-D client may request and receive a continuance for good cause shown (for example, illness or other circumstance which prevents a party from continuing in the normal course of the hearing).
 - G) Following the hearing, the Director of the Department shall make a Final Administrative Decision. A copy of the decision shall be mailed to each interested party and the parties' representatives, if any, within 90 days after the Department's receipt of the request for hearing, extended by any delay caused by any party other than the Department. The Department shall take appropriate action implementing the results of the decision within 30 days after its release.
- c) A hearing to vacate registration or to modify the administrative income withholding notice of the Department shall consider only matters which would be available to the responsible relative as defenses in a civil action in Illinois to enforce a foreign money judgment (such as, payment, partial payment, or identification of the party against whom the judgment was entered). If the responsible relative shows the Department that an appeal from the registered support order is pending or will be taken in the court or administrative body of the jurisdiction which originally entered the order, or that a stay of execution has been granted, the Department shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the stay order is vacated.

(Source: Amended at 27 Ill. Reg. 5833, effective March 24, 2003)

Section 104.103 Conduct of Hearings to Contest the Determination of Past-Due Support or of Share of Jointly-Owned Federal or State Income Tax Refunds or Other Joint Federal or State Payments

- a) Hearings on petitions to contest the determination of the amount of past-due support or of the share of jointly-owned federal or State income tax refunds or other joint federal or State payments shall be governed by Section 104.102, except that subsections (a) and (c) shall not apply, and the following terms as used therein are redefined:
 - 1) "administrative support order" shall mean determinations of past-due support or of share of jointly-owned federal or State income tax refunds or other joint federal or State payments.
 - 2) "liability" shall mean past-due support or share of jointly-owned federal or State income tax refunds or other joint federal or State payments.
 - 3) "responsible relative" shall also mean joint payee.
- b) Upon receipt of a hearing request from a responsible relative or joint payee concerning:
 - 1) an advance notice of intercept, the Department shall, if the request concerns a joint federal or State income tax refund or other joint federal or State payment, inform the responsible relative or joint payee of the steps necessary for the joint payee to secure his proper share of the refund or payment, as stated in the advance notice.
 - 2) an amount already intercepted, the Department shall refer the responsible relative or joint payee to the Internal Revenue Service, if the request concerns a joint federal income tax refund.
- c) Within 45 days after the receipt of a notification from a state intercepting a federal income tax refund that the responsible relative has requested an administrative review in this State, the Department shall complete the procedures set forth in subsection a) above. The Department shall notify the submitting state promptly of the decision and notify the Department of Health and Human Services of the deletion of the amount referred for intercept.

(Source: Amended at 24 Ill. Reg. 2418, effective January 27, 2000)

Section 104.104 Conduct of Other Hearings

- a) Hearings on petitions to contest withholding, or to modify, suspend, terminate, or correct a term contained in an administrative income withholding notice or an administrative National Medical Support Notice, shall be governed by Section 104.102, except that subsections (a)(2) and (c) shall not apply, and the following terms as used therein are redefined:
 - 1) "administrative support order" shall mean an administrative income withholding notice or an administrative National Medical Support Notice.
 - 2) "liability" shall mean the accuracy of the income withholding notice or the National Medical Support Notice, or the accuracy of the delinquency amount stated in the income withholding notice based upon the administrative support order, or the force and effect to be given to such income withholding notice, each as referred to for judicial orders for withholding in 89 Ill. Adm. Code 160.75(d), (e), (j) and (n), or for judicial National Medical Support Notices under 89 Ill. Adm. Code 160.75(m).
- b) The Department shall limit any relief granted to the types of relief authorized for use within judicial orders for withholding in 89 Ill. Adm. Code 160.75(d), (e), (j) and (n), and for judicial National Medical Support Notices under 89 Ill. Adm. Code 160.75(m).

(Source: Amended at 29 Ill. Reg. _____, effective June 30, 2005)

Section 104.105 Conduct of Hearings on Petitions for Release from Administrative Paternity Orders

- a) Hearings on petitions filed under authority of 89 Ill. Adm. Code 160.61(e) for release from an administrative paternity order entered under 89 Ill. Adm. Code 160.61(b) or (c) shall be governed by Section 104.102, except that subsections (a) and (c) shall not apply, and the hearing shall consider only the issues of whether there is a prima facie showing that the petition is timely filed, whether the Department's policies and procedures were followed in entering the administrative paternity order, whether the petitioner has a meritorious defense to entry of the order and whether the petitioner exercised due diligence in presenting that defense to the Department.
- b) In order to prevail on a timely filed petition for release from entry of an administrative paternity order, the petitioner must prove a meritorious defense and exercise of due diligence by clear and convincing evidence.
- c) Relief under this Section shall be available only to the extent allowed under Section 2-1401 of the Civil Practice Law [735 ILCS 5/2-1401].

(Source: Amended at 22 Ill. Reg. 2393, effective January 22, 1999)

Section 104.110 Conduct of Hearings on Joint Owner's Contest of Levy of Jointly-Owned Personal Property

- a) Hearings on a joint owner's petition to contest the lien or levy of jointly-owned personal property, including accounts held in financial institutions, shall be governed by Sections 104.10 through 104.70, except that "appellant" as used within this Part shall refer to the joint owner who petitions, and except as set forth in this Section.
- b) A joint owner's petition to contest lien or levy of jointly-owned personal property must be filed with the regional or central office of the Division of Child Support Enforcement at the address shown in the notice of lien or levy.
- c) For purposes of notice and of presenting evidence, the Title IV-D client and the responsible relative shall be considered interested parties.
- d) Hearings shall be conducted by a hearing officer authorized by the Director of the Department to consider issues involving joint owner petitions to contest lien or levy of jointly-owned personal property.
- e) If the joint owner is an Illinois resident, the hearing shall be conducted in the joint owner's county of residence. If the joint owner is not an Illinois resident, but the client is an Illinois resident, the hearing shall be conducted in the client's county of residence. If neither the joint owner nor the client is an Illinois resident, the hearing shall be conducted in the responsible relative's county of residence. If the joint owner, the client and the responsible relative are not residents of Illinois, the hearing shall be conducted in the appropriate regional office of the Division of Child Support Enforcement. In any event, the hearing may be conducted in a county acceptable to the joint owner, the client, the responsible relative and the Division of Child Support Enforcement. If a party is outside the State, he or she may, in a manner consistent with Section 11-8.2 of the Public Aid Code, present his or her case through depositions and witnesses. In addition, a party may request to participate in a hearing by telephone, at his or her own expense.
- f) Documents certified by a clerk of court or a Title IV-D agency shall be admitted into evidence without further proof. (Refer to Section 104.23 for admission of other evidence.)
- g) In addition to the joint owner, the Division of Child Support Enforcement, the client or the responsible relative may request and receive a continuance for good cause shown (for example, illness or other circumstance that prevents a party from continuing in the normal course of the hearing).
- h) The burden is on the joint owner to prove his or her share of the personal property or account through production of documentary evidence. Documentary evidence of the joint owner's share may include, but shall not be limited to, the following:
 - 1) bank statements;
 - 2) bank signature cards;
 - 3) canceled checks or facsimiles of checks deposited into or drawn on the account;

- 4) account numbers of accounts being held in financial institutions;
 - 5) title to the personal property;
 - 6) loan repayment coupons or other loan documents;
 - 7) receipt from purchase of the personal property; and
 - 8) payroll records.
- i) A hearing decision shall be given to the joint owner, the IV-D client and the responsible relative within 60 days after the Department's receipt of the request for hearing unless additional time is required for a proper decision due to the complexity or unavailability of relevant evidence, and the joint owner, the IV-D client and the responsible relative will be notified of the length of the extension.

(Source: Added at 24 Ill. Reg. 2418, effective January 27, 2000)

SUBPART C: MEDICAL VENDOR HEARINGS

Section 104.200 Applicability

Sections 104.200 through 104.330 apply to the Medical Assistance Program described and defined in Chapter 23 of the Illinois Revised Statutes.

Section 104.202 Definitions

For the purpose of this Part, the terms "Vendor", "Entity" and "Department policy" shall be as defined at 89 Ill. Adm. Code 140.13.

(Source: Amended at 16 Ill. Reg. 18834, effective December 1, 1992)

Section 104.204 Notice of Denial of an Application

- a) If the Department denies an application to participate in the Medical Assistance Program, or denies a request for special permission to continue participation or for reinstatement in the Program, it shall notify the vendor in writing, setting forth:
 - 1) the reasons for the Department's decision,
 - 2) a statement of the right to request a hearing,
 - 3) a statement of the time, place and nature of the hearing, if one is requested,
 - 4) a statement of the legal authority and jurisdiction under which the hearing is to be held, and
 - 5) a reference to the particular sections of the statutes and rules involved.
- b) The Department shall notify the applicant of a decision to deny an application within 60 days, when practicable, of the date the Department has received all materials required by the Department.

(Source: Amended at 16 Ill. Reg. 18834, effective December 1, 1992)

Section 104.206 Notice of Intent to Recover Money

a) Institutional Vendors

- 1) For purposes of this Section, institutional vendors means providers enrolled in the Medical Assistance Program to provide inpatient or residential services, such as hospitals and long term care facilities.
- 2) The Department shall notify the institutional vendor in writing of an intent to recover money, setting forth:
 - A) the reason for the Department's action,
 - B) a statement of the right to request a hearing,
 - C) a statement of the time, place and nature of the hearing,
 - D) a statement of the legal authority and jurisdiction under which the hearing is to be held, and
 - E) a reference to the Sections of the statutes and rules involved
- 3) For institutional vendors, the Department will not recover money prior to the issuance of a final administrative decision, unless the Department determines that the recovery of money would be in jeopardy if the recovery does not occur prior to the completion of the hearing due to events such as, but not limited to, pending decertification of the provider or the filing of a False Claims Act (31 USC 3729) action against the provider. In such circumstances, the Department may recover the money prior to the completion of the hearing, and the notice shall set forth:
 - A) the date after which the Department will start to recover money by deducting from Department obligations to the vendor,
 - B) a statement that the Department will recover the money in this manner prior to the completion of any hearing requested,
 - C) a statement that any money so recovered will be repaid to the vendor if it is determined at hearing that the recovery was not warranted, and
 - D) a statement that the vendor has the opportunity to respond prior to the date the Department will start to recover money during the

pendency of the hearing and a statement of how and to whom such a response should be made.

- 4) Nothing in this subsection (a), except as provided in subsection (a)(3), shall preclude a vendor who is enrolled to provide inpatient or residential services from voluntarily having the Department recover money by deducting from Department obligations to the vendor all or part of the claimed overpayment prior to the completion of any hearing.

b) Noninstitutional Vendors

- 1) For purposes of this Section, noninstitutional vendors means providers enrolled in the Medical Assistance Program that do not provide inpatient or residential services.
- 2) The Department shall notify the noninstitutional vendor in writing of an intent to recover money setting forth:
 - A) the requirements described in subsections (a)(2)(A) through (E) of this Section,
 - B) the date after which the Department will start to recover money by deducting from Department obligations to the vendor,
 - C) a statement that the Department will recover the money in this manner prior to the completion of any hearing requested,
 - D) a statement that any money so recovered will be repaid to the vendor if it is determined at hearing that the recovery was not warranted, and
 - E) a statement that the vendor has the opportunity to respond prior to the date the Department will start to recover money during the pendency of the hearing and a statement of how and to whom such a response should be made.

c) Recovery of Interest

- 1) The Department shall recover interest on the amount of an overpayment at the rate of five percent per annum if it is established through an administrative hearing that the overpayment resulted from the institutional or noninstitutional vendor willfully making, or causing to be made, a false

statement or misrepresentation of a material fact in connection with billings and payments under the medical assistance program.

- 2) The Department shall notify the institutional or noninstitutional vendor in writing of its intent to recover interest on the amount of overpayment by setting forth:
 - A) the requirements described in subsections (a)(2)(A) through (E) of this Section,
 - B) a statement of the amount of overpayment subject to recovery of interest,
 - C) a statement of the amount of interest as of the date of notice,
 - D) a statement that the amount of interest may continue to accrue until such time as the amount of overpayment subject to interest has been paid,
 - E) a statement that any amounts withheld pursuant to Section 104.272 shall first be applied to the amount not subject to the interest provisions of this subsection (c). If the amounts subject to recovery of interest are withheld, the interest will be adjusted to reflect the withholding, and
 - F) a statement that any money so recovered will be repaid to the vendor if it is determined at hearing that the recovery was not warranted.
- d) Nothing in this Section shall preclude a vendor from voluntarily paying the amount of interest or having the Department recover the interest by deducting from Department obligations to the vendor prior to completion of the hearing. If the vendor has voluntarily paid the amount of overpayment subject to recovery of interest prior to the issuance of a final administrative decision, the amount of interest will cease to accrue.

(Source: Amended at 27 Ill. Reg. 13771, effective August 1, 2003)

Section 104.207 Notice of Contested Paternity Hearing

- a) In a matter referred to a Department Hearing Officer pursuant to Section 160.61(c)(5) for a contested paternity hearing, the Department shall notify the alleged father of the hearing in writing, setting forth:
 - 1) the time, place and nature of the hearing;
 - 2) the legal authority and jurisdiction under which the hearing is to be held;
 - 3) a reference to the particular Sections of the substantive and procedural statutes and rules involved;
 - 4) the consequences of the failure to appear at the hearing;
 - 5) the Title IV-D case name and identification number, the names and birthdates of the children he is alleged to have fathered and the name of the mother; and
 - 6) that the alleged father has the right to demand a judicial trial by jury and that this demand must be made no later than 28 days after receipt of the notice provided pursuant to this Section.
- b) No request for a hearing or other pleading need be filed in response to the notice.

(Source: Added at 20 Ill. Reg. 5699, effective March 28, 1996)

Section 104.208 Notice of Intent to Terminate, Suspend or Not Renew Provider Agreement

- a) Except for actions brought jointly by the Department of Public Aid and the Department of Public Health pursuant to Section 104.300, the following provisions apply. If, in an action other than one under 89 Ill. Adm. Code 140.16(a)(2) or one under 89 Ill. Adm. Code 140.16(a)(9) based on a conviction for a violation of the Illinois Public Aid Code, the Department intends to terminate or suspend a vendor's eligibility to participate in the Medical Assistance Program, or terminate (or not renew) a vendor's provider agreement, it shall notify the vendor in writing, setting forth:
 - 1) the reason for the Department's action,
 - 2) a statement of the right to request a hearing prior to the intended action taking effect,
 - 3) a statement of the time, place and nature of the hearing,
 - 4) a statement of the legal authority and jurisdiction under which the hearing is to be held, and
 - 5) a reference to the provisions of the statutes and rules involved.
- b) Except for actions brought jointly by the Department of Public Aid and the Department of Public Health pursuant to Section 104.300, the following provisions apply. If, in an action under 89 Ill. Adm. Code 140.16(a)(2), except in an action initiated pursuant to Section 104.211, an action under 89 Ill. Adm. Code 140.16(a)(9) based on a conviction for a violation of the Illinois Public Aid Code, or an action brought against a non-emergency transportation vendor under 89 Ill. Adm. Code 140.16(a), the Department intends to terminate or suspend a vendor's eligibility to participate in the Medical Assistance Program, or terminate (or not renew) a vendor's provider agreement, it shall notify the vendor in writing, setting forth:
 - 1) the reason for the Department's action,
 - 2) the effective date of the action,
 - 3) a statement that the vendor has the opportunity to respond prior to the effective date and a statement of how and to whom such a response should be made,

- 4) a statement that the action will be effective on such date regardless of whether any hearing requested has been completed,
 - 5) a statement of the right to request a hearing,
 - 6) a statement of the time, place and nature of the hearing,
 - 7) a statement of the legal authority and jurisdiction under which the hearing is to be held, and
 - 8) a reference to the provisions of the statutes and rules involved.
- c) In an action brought jointly against a nursing home (not an ICF/MR facility) by the Illinois Department of Public Aid and the Illinois Department of Public Health pursuant to Section 104.300 in which the Department of Public Aid intends to terminate, suspend or deny the provider agreement, and the Department of Public Health intends to deny certification, the Departments shall notify the vendor in writing, setting forth:
- 1) the reason for the Department's action,
 - 2) the effective date of the action,
 - 3) a statement that the vendor has an opportunity to respond prior to the effective date and a statement of how and to whom such a response should be made,
 - 4) a statement that the action will be effective on such date regardless of whether any hearing requested has been completed,
 - 5) a statement of the right to request a hearing,
 - 6) a statement that a hearing will be scheduled to take place within 30 days after receipt of a request for hearing,
 - 7) a statement of the legal authority and jurisdiction under which the hearing is to be held, and
 - 8) a reference to the Sections of the statutes and rules involved.
- d) In an action brought jointly against an ICF/MR facility by the Illinois Department of Public Aid and the Illinois Department of Public Health pursuant to Section 104.300

in which the Department of Public Aid intends to terminate, suspend or deny the provider agreement, and the Department of Public Health intends to deny certification, the Departments shall notify the vendor in writing, setting forth:

- 1) the reason for the Department's action,
 - 2) a statement of the right to request a hearing prior to the intended action taking effect,
 - 3) a statement that a hearing will be scheduled to take place within 30 days after receipt of a request for hearing,
 - 4) a statement of the legal authority and jurisdiction under which the hearing is to be held, and
 - 5) a reference to the provisions of the statutes and rules involved.
- e) The notice shall also inform the vendor, where applicable, that the final administrative decision of the Department could result in suspension for a specific period of time as well as termination.

(Source: Amended at 28 Ill. Reg. 2735, effective February 1, 2004)

Section 104.209 Notice of Intent to Certify Past-Due Support Owed by a Responsible Relative to, or Failure to Comply with a Subpoena or Warrant from, a State Licensing Agency and to Take Disciplinary Action

If the Department intends to certify past-due support owed by a responsible relative to a State licensing agency or failure to comply with a subpoena or warrant and the licensing agency intends to take disciplinary action, the Department and the licensing agency shall notify the responsible relative in writing, setting forth:

- a) the reasons for the intended actions;
- b) a statement of the right to request a hearing;
- c) a statement of the time, place and nature of the hearing, if one is requested;
- d) a statement of the legal authority and jurisdiction under which the hearing is to be held;
- e) a reference to the Sections of the statutes and rules involved; and
- f) a statement of the right to prevent certification and disciplinary action by payment of the past-due support in full or by entering into a payment plan acceptable to the Department, or in cases involving failure to comply with a subpoena or warrant, by complying with the subpoena or warrant.

(Source: Amended at 21 Ill. Reg. 14977, effective November 7, 1997)

Section 104.210 Right to Hearing

- a) An entity may request a hearing within 10 days after the entity's receipt of the Department's notice of:
 - 1) the Department's decision to deny an application (as provided in Section 104.204);
 - 2) the Department's intent to recover money (as provided in Section 104.206);
 - 3) the Department's intent to terminate or suspend a vendor's eligibility or terminate (or not renew) a vendor's provider agreement (as provided in Section 104.208); or
 - 4) the Department's intent to certify past-due support owed by a responsible relative to, or failure to comply with a subpoena or warrant from, a State licensing agency and the licensing agency's intent to take disciplinary action (as provided in Section 104.209).
- b) A request for hearing must be received by the Department within 10 days of the date on which the vendor received the Department's notice.
- c) This request must be in writing and must contain a brief statement of the basis upon which the Department's action is being challenged.
- d) If such a request is not received within 10 days, or is received but later withdrawn, the Department's decision and the grounds asserted as the basis therefor in the notice shall be a final and binding administrative determination.
- e) In actions initiated pursuant to Section 104.206 or 104.208(b), if a vendor requests a hearing, such a request shall not delay the effective date of action set forth in the Notice. In all other actions initiated pursuant to Sections 104.204 or 104.208(a) or (d), the action shall not take place until the final administrative decision has been issued.
- f) A long term care facility may request a hearing within 60 days after receipt of the Department's notice on any action initiated pursuant to Section 104.208(c) or (d). For a nursing home (not an ICF/MR facility), such request shall not delay the effective date of action set forth in the notice pursuant to Section 104.208(c).

(Source: Amended at 21 Ill. Reg. 14977, effective November 7, 1997)

Section 104.211 Notice of Termination or Suspension Pursuant to Exclusion by the
Department of Health and Human Services

- a) In an action under 89 Ill. Adm. Code 140.16(a)(2) based on the Department of Health and Human Service exclusion of an entity from participation in any program under Title XVIII or Title XIX of the Social Security Act or any State health care program, the Department shall terminate the vendor's eligibility to participate in the Medical Assistance Program and terminate the vendor's provider agreement. If the exclusion is for a period of less than one year, the Department may suspend the vendor's eligibility for a period to coincide with the period of the exclusion by the Department of Health and Human Services. The Department shall notify the vendor in writing setting forth:
 - 1) the reason for the Department action,
 - 2) the effective date of the action,
 - 3) a statement that the provider may submit in writing prior to the effective date evidence that there is no exclusion of the provider, and the name and address of the person to whom such evidence is to be sent,
 - 4) a reference to the provisions of the statutes and rules involved, and
 - 5) a statement that the action is a final and binding administrative decision as of the effective date of the action unless the vendor is notified otherwise by the Department prior to the effective date.
- b) The hearing provisions set forth elsewhere in Subpart C shall specifically not apply to an action under this Section.

(Source: Added at 19 Ill. Reg. 1321, effective January 30, 1995)

Section 104.212 Prior Factual Determinations

Factual determinations made by the Department in administrative hearings initiated prior to the effective date of these Rules and which involve issues of fact relating to activities which constitute grounds for termination pursuant to these Rules may be used as grounds for approval or denial of applications to participate, for termination or suspension of eligibility or termination (or nonrenewal) of a provider agreement, or for recovery of money, without conducting a new administrative proceeding.

(Source: Amended at 16 Ill. Reg. 18834, effective December 1, 1992)

Section 104.213 Demand for Judicial Determination of the Existence of the Father and Child Relationship

- a) A respondent in a contested paternity hearing may file a demand in writing for a judicial determination of the existence of the father and child relationship. This demand must be filed no later than 28 days after receipt of the notice served pursuant to Section 104.207.
- b) In hearings in which such a demand is filed, the Department shall retain jurisdiction over the respondent until genetic tests are ordered pursuant to Section 104.249 and the results have been received. The Department will refer for judicial action in Circuit Court any matter in which a demand for judicial determination of the existence of the father and child relationship has been timely filed.

(Source: Amended at 21 Ill. Reg. 14977, effective November 7, 1997)

Section 104.215 Notice of Formal Conference

When the Department schedules a formal conference, it shall notify the vendor in writing. The notice shall direct any parties and/or their attorneys to appear at a specified date, time and place.

(Source: Peremptory amendment at 5 Ill. Reg. 1197, effective January 23, 1981)

Section 104.216 Formal Conference on Recovery of Money

- a) Upon receipt of a request for hearing submitted due to the Department's intent to recover money pursuant to Section 104.206, the Department shall schedule a pre-hearing formal conference. This formal conference shall commence within 30 days of receipt of such a request unless later scheduled with the written consent of all parties.
- b) This Section shall not be applicable to Department actions to initiate collection of Provider Assessment Taxes under the Medicaid Revenue Act (Public Act 87-861).

(Source: Amended at 17 Ill. Reg. 7025, effective April 30, 1993)

Section 104.217 Purpose of Formal Conference

The purposes of the formal conference shall include, but not be limited to:

- a) clarification, formulation and simplification of issues;
- b) resolution of matters in controversy;
- c) exchange of documents and information;
- d) review of audit findings.
- e)
 - 1) An opportunity for the vendor to rebut the Department's audit findings. If the Department's findings were based on sampling and extrapolation, the vendor may present evidence to show that the sample used by the Department was invalid and, therefore, cannot be used to project the overpayments identified in the sample to total billings for the audit period.
 - 2) The vendor may also conduct an audit of 100% of the medical records of payments received during the audit period and present the result of such an audit at the formal conference. Any such audit should demonstrate that the vendor's records for the unaudited services provided during the audit period were in compliance with the regulations, provider handbooks and other written requirements of the Department. The vendor should be prepared to submit supporting documentation to demonstrate this compliance.
- f) Stipulations of fact so as to avoid unnecessary introduction of evidence at the hearing. Matters which may be readily stipulated at the formal conference are:
 - 1) that the respondent has received all applicable written communications, including the notice of intent to recover money as provided in Section 104.206;
 - 2) all procedural matters, including appearances made by both parties and the respondent's request for hearing and answer; and
 - 3) a list of witnesses and any evidence to be presented at the hearing by all parties.
- g) The identification of witnesses.
- h) Such other matters as may aid in the simplification of the evidence and disposition of the issues.

(Source: Peremptory amendment at 5 Ill. Reg. 1197, effective January 23, 1981)

Section 104.220 Notice of Hearing

When the Department schedules a hearing, it shall notify the parties and/or their attorneys in writing to appear and specify a date, time and place.

(Source: Amended at 2 Ill. Reg. 21, p. 10, effective May 26, 1978)

Section 104.221 Issues at Hearings

- a) The sole issue at a hearing where the basis for denial of an application pursuant to 89 Ill. Adm. Code 140.14(d) is that the vendor does not have a necessary license, certificate or authorization shall be whether the vendor has such a license, certificate or authorization.
- b) The sole issue at a hearing where the basis of the denial of an application is as set forth in 89 Ill. Adm. Code 140.14(b) shall be whether the vendor has demonstrated, according to the factors listed in that Section, in light of the prior activities, that he should be admitted to the Medical Assistance Program.
- c) The sole issue at a hearing where the basis for termination is as set forth in 89 Ill. Adm. Code 140.16(a)(2) shall be whether the appropriate licensing, certifying or authorizing agency has determined that the vendor does not have a necessary license, certification or authorization.
- d) The sole issue at a hearing requested by a previously suspended vendor that is being terminated pursuant to 89 Ill. Adm. Code 140.19(b) shall be whether the vendor has corrected the deficiencies on which the suspension was based.
- e) At a hearing conducted pursuant to Subpart D of this Part, the sole relevant time with respect to the existence of the violations of the Department's requirements alleged in the notice shall be the date or dates in the notice.
- f) The only issues at a hearing initiated pursuant to Section 104.209 are whether the responsible relative has or is applying for a license, the amount, if any, of delinquent child support owed pursuant to a support order entered by a court or administrative body, whether the responsible relative is more than 30 days delinquent, and, if applicable, whether the responsible relative failed to comply with a subpoena or warrant.
- g) The only issue at a hearing initiated pursuant to 89 Ill. Adm. Code 140.16(c) is whether the vendor is not in compliance with State income tax requirements, child support requirements of Article X of the Public Aid Code, or educational loans guaranteed by the Illinois Student Assistance Commission.

(Source: Amended at 21 Ill. Reg. 14977, effective November 7, 1997)

Section 104.225 Legal Counsel

- a) Any party may appear and be heard at a hearing requested pursuant to Section 104.210 or any formal conference conducted pursuant to Section 104.216 through an attorney at law authorized to practice in the State of Illinois or any other state. An individual may appear and be heard on his or her own behalf.
- b) All persons appearing in proceedings before the Department shall conform to the standards of conduct of attorneys before the courts of the State of Illinois. If a person does not conform to such standards, the Department may decline to permit such person to appear in any proceeding or exclude such person.

(Source: Amended at 26 Ill. Reg. 12306, effective July 26, 2002)

Section 104.226 Appearance of Attorney or Other Representative

Attorneys or other persons appearing in a representative capacity shall file a written notice of appearance identifying themselves by name, address and telephone number and identifying the party represented.

(Source: Amended at 2 Ill. Reg. 21, p. 10, effective May 26, 1978)

Section 104.230 Notice, Service and Proof of Service

- a) The chief hearing officer and all parties to the proceedings shall be served all papers, notices and other documents filed by any party. Proof of such service upon all parties shall be filed with the chief hearing officer.
- b) Final administrative decisions issued pursuant to these Rules as well as any notice which initiates administrative proceedings pursuant to these Rules and which states that the Department intends to recover money from a vendor, terminate or suspend a vendor's eligibility to participate in the Medical Assistance Program or terminate, suspend, or not renew a vendor's provider agreement, or deny a vendor's application for participation, must be served personally or by certified or registered mail upon the vendor or the vendor's agent appointed to receive service of process.
- c) All other papers, notices and documents may be served personally or by deposit in the United States mail, properly addressed with postage prepaid, one copy to each party entitled thereto.
- d) When any party or parties have appeared by attorney, service upon the attorney shall be deemed service upon the party or parties.
- e) Proof of service of any paper shall be by certificate of attorney, affidavit or acknowledgement, or certified or registered mail return receipt.
- f) Wherever notice or notification is indicated or required, it shall be effective upon the date of mailing to a vendor's or other party's business address, residence or last address on file with the Department.
- g) In addition to the methods provided for in these rules, a vendor may be served in any manner permitted by law.

(Source: Amended at 13 Ill. Reg. 17013, effective October 16, 1989)

Section 104.231 Form of Papers

- a) All papers filed in any proceeding shall be typewritten on letter sized white paper using one side of the paper only. They shall bear a caption clearly showing the title of the proceeding in connection with which they are filed, together with the docket number, if any.
- b) All papers shall be signed by the party or his authorized representative or attorney, and shall contain his address and telephone number.

(Source: Amended at 13 Ill. Reg. 17013, effective October 16, 1989)

Section 104.235 Discovery

- a) There shall be no discovery under this Part except for the following items if relevant to the case:
 - 1) The Department shall provide, upon request, to the vendor:
 - A) lists of witnesses;
 - B) the provider detail report, the drug inventory report, the claim detail report;
 - C) in actions against a nursing home based upon Department of Public Health surveys, all surveys that federal or State regulations require surveyors to complete during the investigation;
 - D) transcripts of that portion of peer review committee proceedings wherein the vendor appears, not including the committee's deliberations;
 - E) resolutions of a peer review committee regarding the vendor;
 - F) any report regarding the vendor prepared by the Bureau of Medicaid Integrity's medical consultant witness; and
 - G) any exhibits or documents that may be identified at hearing.
 - 2) The vendor shall provide, upon request, to the Department:
 - A) a list of witnesses and all reports written by each witness concerning the issue about which he or she is testifying; and
 - B) a copy of exhibits and documents that may be identified at hearing.
- b) Requests for discovery shall be made no later than the 21st day after receipt of the notice described in Sections 104.204 through 104.208, or no later than the 21st day after amendment, pursuant to Section 104.241, of the grounds for the action which would make discovery of any of the above items relevant for the first time.
- c) Discovery is to be provided to the requesting party within 21 days after service of a request. In no event shall a scheduled hearing be continued because of an untimely discovery request without good cause having been shown.
- d) Each party has a duty to seasonably supplement its witness list and documentary evidence that may be used at hearing. The administrative law judge may exclude witnesses or evidence absent a showing of good cause as to why the discovery was not tendered in response to the original discovery request.

(Source: Amended at 26 Ill. Reg. 9836, effective June 26, 2002)

Section 104.240 Conduct of Hearings

- a) The hearing shall be conducted by an attorney designated by the Director as a hearing officer.
- b) The hearing shall be open to such persons as the hearing officer deems necessary and proper for its orderly and efficient conduct.
- c) The hearing officer shall inquire fully into the matters at issue and shall receive testimony of witnesses and any other evidence which is relevant and material to the issues presented. The hearing officer shall determine the order in which evidence is taken and the procedure at the hearing.

(Source: Amended at 2 Ill. Reg. 21, p. 10, effective May 26, 1978)

Section 104.241 Amendments

At any time before completion of the hearing, amendments may be allowed on just and reasonable terms to introduce any party who ought to have been joined, to dismiss any party, or to delete, modify or add allegations or defenses.

(Source: Peremptory amendment at 5 Ill. Reg. 1197, effective January 23, 1981)

Section 104.242 Motions

A hearing officer may allow oral motions and responses on emergency or purely procedural questions or for good cause shown. Emergency and procedural motions will be ruled upon when made. Other motions, such as motions to dismiss, etc., will not be ruled upon individually but will be considered in preparation of the recommended decision.

(Source: Amended at 2 Ill. Reg. 21, p. 10, effective May 26, 1978)

Section 104.243 Subpoenas

- a) Any request that a Department subpoena issue on behalf of a party to a hearing may be made in writing to the designated hearing officer, or if none has been designated, to the chief hearing officer.
- b) A subpoena shall be granted by the Department only upon:
 - 1) a showing of relevancy and reasonable scope; and
 - 2) a showing that unless the subpoena is issued the party will be unable to produce individuals or documents requested by the subpoena; and
 - 3) a showing that the individuals or documents requested by the subpoena are not unduly repetitious; and
 - 4) a showing that there are not other individuals or documents available to establish the matters which the subpoenaed individuals or documents are intended to establish.
- c) No subpoena shall issue for any party, for any person presently employed by a party, or for any documents in possession of a party.

(Source: Amended at 13 Ill. Reg. 17013, effective October 16, 1989)

Section 104.244 Burden of Proof

- a) The burden of proof in hearings conducted pursuant to 89 Ill. Adm. Code 140.14 shall be on the Department if the application was denied because the vendor engaged in activities which constitute grounds for termination or was denied pursuant to 89 Ill. Adm. Code 140.14(c). The burden of proof shall be on the applicant if the application was denied because of:
 - 1) a determination that a previously terminated or barred vendor cannot reasonably be expected to meet the requirements of the Department; or
 - 2) a determination that based on the activities which served as the basis for terminating or barring a vendor, the application should not be approved.
- b) The burden of proof in hearings conducted pursuant to 89 Ill. Adm. Code 140.15 or Subpart D of this Part shall be on the Department.
- c) The burden of proof in hearings conducted pursuant to 89 Ill. Adm. Code 140.16 shall be on the Department.
- d) The burden of proof in hearings conducted pursuant to 89 Ill. Adm. Code 140.32 shall be on the party seeking special permission, and in hearings conducted pursuant to 89 Ill. Adm. Code 140.19(b) shall be on the vendor.
- e) In the case of any new matter introduced in connection with any affirmative defense, the burden of proof with respect thereto shall be upon the party which alleges such new matter. In hearings initiated pursuant to Section 104.209, a party alleging that the support order referenced in the notice has subsequently been modified shall have the burden of producing a certified copy of the modified order.
- f) The standard of proof with respect to all hearings conducted pursuant to these rules shall be a preponderance of the evidence.

(Source: Amended at 19 Ill. Reg. 1321, effective January 30, 1995)

Section 104.245 Witness at Hearings

- a) The hearing officer may administer oaths to witnesses.
- b) Both the hearing officer and the parties or their representatives may examine witnesses.
- c) A party may conduct examination and cross-examination which is shown to be necessary to a full and fair disclosure of facts bearing upon matters in issue, provided that such examination or cross examination does not abuse or harass a witness.

(Source: Peremptory amendment at 5 Ill. Reg. 1197, effective January 23, 1981)

Section 104.246 Evidence at Hearings

- a) The vendor may introduce evidence at the hearing that was not made available to the Department at the time the application or request for special permission was denied. If additional evidence is introduced at the hearing and the hearing officer determines that the vendor did not demonstrate he should be admitted based on the evidence available at the time the application or request for special permission was denied, but would have so demonstrated had the additional evidence at the hearing been available, the hearing shall be remanded to the Department for a new decision which considers such additional evidence. If additional evidence is introduced at the hearing and the hearing officer determines that the vendor would not have demonstrated that he should be admitted to the Medical Assistance Program or granted special permission even if such additional evidence had been considered, the recommendation shall be to uphold the Department's decision.
- b) Irrelevant, immaterial or unduly repetitious evidence shall be excluded. The rules of evidence and privilege as applied in civil cases in the Circuit Courts of this State shall be followed. However, evidence not admissible under such rules of evidence may be admitted (except where precluded by statute) if it is of the type commonly relied upon by reasonably prudent men in the conduct of their affairs. When the admissibility of evidence is in dispute and depends upon fairly arguable interpretations of law, such evidence shall be admitted. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced, any part of the evidence may be received in written form. Any party may submit evidence in rebuttal or surrebuttal.
- c) Summaries of voluminous documents may be admitted into evidence. The document summarized need not itself be admitted into evidence. Copies of the document need not be provided so long as all parties are accorded a reasonable opportunity to inspect the document summarized and no substantial injustice results.
- d) If the hearing is related in whole or in part to the Department's intent to recover money and the Department's recovery is based on sampling and extrapolation, the vendor may:
 - 1) present evidence to show that the sample used by the Department was invalid and, therefore, should not be used to project the overpayments identified in the sample to total billings for the audit period; or
 - 2) the vendor may also conduct an audit of 100% of the medical records of payments received during the audit period and present the results of such an audit at the hearing. Any such audit should demonstrate that the vendor's records for the unaudited services provided during the audit period were in compliance with the regulations, provider handbooks and other written requirements of the Department. The vendor should be prepared to submit supporting documentation to demonstrate this compliance.

- e) In contested hearings to establish paternity under 89 Ill. Adm. Code 160.61(c), certified copies of bills for costs incurred for pregnancy and childbirth shall be admitted into evidence without foundation testimony or other proof of authenticity or accuracy.

(Source: Amended at 21 Ill. Reg. 14977, effective November 7, 1997)

Section 104.247 Cross-Examination

- a) Subject to the evidentiary requirements of this Part, a party may conduct cross-examination required for a full and fair disclosure of the facts.
- b) If the presiding hearing officer determines that a witness is hostile or unresponsive, he may authorize the examination by the party calling such witness as if under cross-examination.
- c) Any party may call any adverse party as a witness and proceed to examine such adverse party as if under cross-examination except that the vendor may only call as an adverse witness those representatives of the Department or other Departments (including the Illinois Department of Public Health) directly involved in the audit, investigation, or survey which served as the basis for the Department's action under this Part.
- d) Any party calling a witness, upon a showing that he called the witness in good faith and is surprised by his testimony, may impeach that witness by evidence of prior inconsistent statements.

(Source: Amended at 13 Ill. Reg. 17013, effective October 16, 1989)

Section 104.248 Disqualification of Hearing Officers

- a) A party may move for the disqualification of a Hearing Officer based on bias or a conflict of interest. The motion must be in writing and must state specific facts establishing that bias or a conflict of interest exists. Adverse rulings in pending or prior cases shall not be sufficient to establish bias or conflict of interest.
- b) A motion for disqualification shall be made promptly after the moving party learns the identity of the Hearing Officer or after learning facts that establish grounds for disqualification. The motion shall be presented to the Hearing Officer assigned to hear the matter.

(Source: Added at 16 Ill. Reg. 16632, effective October 23, 1992)

Section 104.249 Genetic Testing in Contested Paternity Hearings

- a) In contested paternity hearings, the provisions of Section 11 of the Illinois Parentage Act of 1984 [750 ILCS 45/11] shall govern the ordering of genetic testing, the admissibility of test results, presumptions based on the results and all other issues relating to genetic testing. References in Section 11 to "the court" shall be deemed to mean the Department Hearing Officer.
- b) Regardless of whether a demand for a judicial trial has been filed under Section 104.213, if a respondent fails to comply with an order to submit to genetic testing, an administrative order establishing paternity may be entered against him.

(Source: Added at 20 Ill. Reg. 5699, effective March 28, 1996)

Section 104.250 Official Notice

- a) Official notice may be taken of:
 - 1) Matters of which the Circuit Courts of this State may take judicial notice,
 - 2) Matters in prior administrative hearings within and without the agency relating to the vendor or individuals associated with the vendor (including findings and evidence made in hearings initiated prior to the effective date of these rules).
 - 3) Generally recognized technical or scientific facts within the agency's specialized knowledge;
 - 4) Generally recognized technical, scientific or customary and ordinary procedures and operation without the agency.
- b) For purposes of this Section, "individuals associated with the vendor" shall mean:
 - 1) persons with management responsibility for the vendor;
 - 2) an officer or person owning (directly or indirectly) 5% or more of the shares of stock or other evidences of ownership in a corporate vendor;
 - 3) an owner of a sole proprietorship which is a vendor or
 - 4) a partner in a partnership which is a vendor.
- c) Parties shall be notified either before or during a hearing, or by reference in preliminary reports, or otherwise, of the material noticed, including any staff memoranda or data to be offered as evidentiary matter during the course of the hearing, and they shall be afforded an opportunity to contest the material so noticed. Testimony of the agency's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence.

(Source: Amended at 15 Ill. Reg. 6557, effective April 30, 1991)

Section 104.255 Computer Generated Documents

Unless proven otherwise, computer generated documents prepared by the Department shall be presumed to constitute an accurate reflection of the Department's records as to the amount and type of payment made to the vendor as well as the basis for such payment.

(Source: Peremptory amendment at 5 Ill. Reg. 1197, effective January 23, 1981)

Section 104.260 Recommendation of Peer Review Committee

- a) Whenever an action or decision by the Department pursuant to 89 Ill. Adm. Code 140.14 through 140.19 is based in whole or in part on a report, opinion or recommendation of a committee consisting of the vendor's professional peers,
 - 1) A transcript of the vendor's appearance before a committee of his peers may be considered and introduced into evidence at the hearing; and/or
 - 2) In addition to or in lieu of the transcript, a member of the committee may testify as to the reports, opinions and recommendations of the committee.
- b) The vendor may introduce any evidence which is relevant and material to the reports, opinions, or recommendations of the committee.

(Source: Amended at 13 Ill. Reg. 17013, effective October 16, 1989)

Section 104.270 Time Limits for Hearings

- a) Hearings conducted pursuant to 89 Ill. Adm. Code 140.14 and 140.16 shall be scheduled within 30 days of service of the notice served under Sections 104.204 or 104.208(a) and (b).
- b) Hearings conducted pursuant to 89 Ill. Adm. Code 140.15 shall be scheduled within 30 days of the completion of the formal conference sessions.
- c) Hearings conducted as the result of an action taken pursuant to Section 104.300 shall be scheduled to take place within 30 days after receipt of a request for hearing in accordance with Section 104.208(c) or (d).

(Source: Amended at 19 Ill. Reg. 15711, effective November 6, 1995)

Section 104.271 Continuances and Extensions

A party may be granted one continuance on request. Any other requests will be granted only for good cause shown.

Section 104.272 Withholding of Payments During Pendency of Proceedings

- a) Payments on pending and subsequently submitted bills may be withheld during the pendency of the administrative proceeding:
 - 1) Where:
 - A) the administrative proceeding seeks the termination of the provider; or
 - B) the administrative hearing is seeking recovery of money and the recovery is at risk due to the financial or other circumstances of the provider.
 - 2) Where the administrative proceeding is seeking recovery of money only, the withholding shall be limited to the amount sought in the recovery and in conformance with Section 104.273.
- b) A provider may request a full or partial release of withheld payments. The provider must submit a request, in writing, setting forth the reasons the payments should be released, to the Office of Inspector General at either 404 North Fifth Street, Springfield, Illinois 62702, or by e-mail to oig_webmaster@mail.idpa.state.il.us. The request should set forth the reasons for the request in conformance with subsection (c) of this Section.
- c) Partial or full release of payments on pending and subsequently submitted bills may be granted, at the discretion of the Inspector General of the Department, based on the following factors:
 - 1) The Department has not proceeded in a timely manner in presentation of its case in the administrative proceeding, including, but not limited to, lengthy delays in the availability of Department witnesses, attorneys or Administrative Law Judges.
 - 2) Where it is in the best interests of the recipients of medical assistance. This may include, but is not limited to, access to medical services for recipients or the potential movement of patients from long term care settings.
 - 3) Where, based on the reasons for the initiation of the proceeding, the full or partial release of payments would not be, in the judgement of the Inspector General, detrimental to the recipients or the Department.

- 4) Whether the vendor has caused delays in proceeding in a timely manner, including, but not limited to, delays in the availability of witnesses or attorneys.
- d) The Inspector General will notify the provider in writing of the decision on the request for release of payments.
- e) Payments on pending and subsequently submitted bills will not be released if:
 - 1) The basis for the termination is a criminal conviction.
 - 2) The basis for the termination is the termination, revocation or denial of a professional license or certification.
 - 3) The provider has had payments suspended pursuant to 42 CFR 455.23.
 - 4) The provider has had payments suspended pursuant to 305 ILCS 5/12-4.25 (F-5).
- f) The Inspector General may release partial payment when, in the judgement of the Inspector General, full release of payments is not warranted pursuant to subsection (b) of this Section, but a partial release would meet these criteria.
- g) The Inspector General may again institute full or partial withholding of payments after a full or partial release of payments if:
 - 1) The vendor has not proceeded in a timely manner in presentation of its case in the administrative proceeding, including, but not limited to, lengthy delays in the availability of witnesses or attorneys.
 - 2) The vendor's professional license or certification has been revoked, suspended, denied or otherwise not renewed.
- h) If the vendor is terminated as a result of final agency action, payments or credit for any services rendered subsequent to receipt of the notice of intent to terminate shall be denied. The vendor will receive payment or credit for services rendered prior to receipt of the notice of intent to terminate subject to setoff for recovery of the amount sought in the proceeding.

(Source: Amended at 27 Ill. Reg. 13771, effective August 1, 2003)

Section 104.273 Continuation of Payments During Pendency of Proceedings

The Department will continue to make payments during the pendency of an administrative proceeding when federal or State law or regulation does not require such payments to be withheld, and in the following circumstances:

- a) If the vendor is a nursing home (not an ICF/MR facility), the Department will continue to make payments up to the termination date established by the Department for services rendered to persons continuously eligible for and receiving Medical Assistance and residing in the home on the date of the Department's notice initiating the administrative proceeding; or
- b) If the vendor is an ICF/MR facility, the Department will continue to make payments for services rendered to persons continuously eligible for and receiving Medical Assistance and residing in the home on the date of the Department's notice initiating the administrative proceeding; or
- c) If the vendor is a hospital and the Department's notice:
 - 1) is a result of Medicare action, the Department will continue to make payments for services rendered, to persons who are eligible for and receiving Medical Assistance on the date of service of the Department's notice, up to the date the vendor's participation is terminated; or
 - 2) is for Medicaid only action, the Department may withhold payments pursuant to section 104.272; or
- d) If the administrative proceeding only relates to recovery of money (and not termination), the Department will continue to process invoices for services rendered by the vendor. For vendors other than institutional vendors, the payments shall be subject to setoff for recovery of the amount sought in the proceeding; or
- e) If the administrative proceeding only relates to suspension and not termination of eligibility, the Department will continue to make payments for services rendered by the vendor.

(Source: Amended at 24 Ill. Reg. 5351, effective April 1, 2001)

Section 104.274 Denial of Payments for Services During Pendency of Proceedings

If the vendor is terminated as a result of final agency action, payments or credit for any services rendered subsequent to receipt of the notice of intent to terminate shall be denied unless:

- a) Pursuant to Section 104.273, payments were not withheld; or
- b) Pursuant to Section 104.272, previously withheld payments for such services had been released.

(Source: Amended at 27 Ill. Reg. 13771, effective August 1, 2003)

Section 104.280 Record of Hearings

- a) A complete record of the hearing shall include:
 - 1) all pleadings (including all notices and responses thereto, motions and rulings);
 - 2) documentary evidence received;
 - 3) offers of proof, objections and rulings thereon;
 - 4) proposed findings and exceptions;
 - 5) the recommended decision of the hearing officer; and
 - 6) any ex parte communication prohibited by Section 10-60 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1987, ch. 127, par. 1010-60).
- b) A copy of the record will be reproduced at the request of any party to the review who bears the cost thereof.

(Source: Amended at 13 Ill. Reg. 17013, effective October 16, 1989)

Section 104.285 Failure to Appear or Proceed

- a) If the vendor, without good cause, fails to appear at a hearing or formal conference scheduled by the Department, or fails to proceed at a hearing, the Department's action or decision and the grounds asserted as the basis therefor shall be a final and binding administrative determination.
- b) If the Department fails, without good cause, to appear at such hearing or formal conference, or fails to proceed at a hearing, the Department's action shall be dismissed.

(Source: Amended at 13 Ill. Reg. 17013, effective October 16, 1989)

Section 104.290 Recommended Decision

- a) After the close of a hearing, the hearing officer shall prepare a written recommended decision which shall be based upon the evidence adduced at the hearing or otherwise included in the record. The recommended decision shall contain findings of fact and recommendations.
- b) This recommended decision shall be submitted to the Director. The hearing officer shall also send a copy of the recommended decision to the Respondent or his counsel and to the Department's counsel. Both Respondent and the Department's counsel may file written exceptions with the Director within 10 days of receipt. Both Respondent and the Department's counsel may file a written response to the exceptions with the Director within 5 days of receipt of the exceptions.

(Source: Amended at 13 Ill. Reg. 17013, effective October 16, 1989)

Section 104.295 Director's Decision

- a) The Director shall make a final decision in each case. The decision shall be in writing and contain findings of fact, and a final administrative decision. A copy of the decision shall be served on each party at his last address on file with the Department.
- b) The final decision is reviewable only by a timely complaint filed under the Administrative Review Law (Ill. Rev. Stat. 1989, ch. 110, par. 3-101 et seq.). No petition for rehearing or reconsideration is allowed. Neither the filing of any such motion, or correspondence in the nature of such a motion, nor any response by the Department to such correspondence or motion will delay the time for filing of a complaint in administrative review.

(Source: Amended at 16 Ill. Reg. 16632, effective October 23, 1992)

SUBPART D: RULES FOR JOINT DEPARTMENT ACTIONS AGAINST SKILLED
NURSING FACILITIES AND INTERMEDIATE CARE FACILITIES PARTICIPATING IN
THE MEDICAID PROGRAM

Section 104.300 Authority

- a) Sections 104.300 through 104.330 are promulgated jointly by the Department of Public Aid and Public Health, State of Illinois, pursuant to Section 5-10 of the Administrative Procedure Act, Ch. 127, Par. 1005-10 of the Illinois Revised Statutes; Ch. 23, Pars. 5-9, 12-4.25, 12-4.26, 12-4.27 and 12-13 of the Illinois Revised Statutes; and, Federal regulations set forth in 42 CFR 431.151.
- b) These rules shall govern, except as hereinafter stated, the hearing procedures that the State of Illinois must, pursuant to 42 CFR 431.151, and Chapter 23, paragraph 12-4.25, Illinois Revised Statutes, make available to a skilled nursing facility or an intermediate care facility when a denial, suspension or termination of the eligibility of said facilities to participate as a vendor of goods or services to recipients under the Medical Assistance Program is sought as well as prior to a denial, termination or refusal to renew certification of said facilities.

Section 104.302 Definitions

- a) For purposes of these Rules, IDPH shall mean the Illinois Department of Public Health.
- b) For purposes of these Rules, IDPA shall mean the Illinois Department of Public Aid.
- c) For purposes of these Rules, SNF shall mean Skilled Nursing Facility.
- d) For purposes of these Rules, ICF shall mean Intermediate Care Facility.

Agency Note: Supplements those applicable definitions contained in the current rules of IDPA and IDPH.

Section 104.304 Department Actions Against Nursing Homes Facilities

- a) A single administrative hearing procedure for skilled nursing facilities and intermediate care facilities will be followed in those cases where:
 - 1) The Department of Public Aid is seeking to deny, suspend or terminate the facility's participation in the Medical Assistance Program pursuant to 89 Ill. Adm. Code 140.14 or 140.16; and
 - 2) The Department of Public Health, seeks to deny, terminate or refuse to renew the facility's certification to participate in the Medicaid Program.
- b) These rules shall not apply when the Department of Public Aid is seeking to deny, suspend or terminate the facility's participation in the Medical Assistance Program pursuant to 89 Ill. Adm. Code 140.14 or 140.16 but no action is being taken by the Department of Public Health to deny, terminate or fail to renew the facility's certification to participate in the Medicaid program.

(Source: Amended at 15 Ill. Reg. 6557, effective April 30, 1991)

Section 104.310 Certification

- a) As a condition of execution of a provider agreement or a renewal thereof by IDPA, the ICF or SNF must be currently certified by IDPH in accordance with 42 CFR 442.
- b) When IDPH determines that an ICF or SNF does not meet the requirements for certification, IDPH shall request that the ICF or SNF submit an acceptable written plan of correction, pursuant to 42 CFR 442, unless the facility has serious deficiencies which affect the health, safety, or welfare of the residents or repeat deficiencies, in which case IDPH shall schedule an informal reconsideration (as provided in section 8 of IDPH's Rules and Regulations to carry out provisions of Titles XVIII and XIX of the Social Security Act relating to Skilled Nursing and Intermediate Care Facilities), or notify IDPA.

Section 104.320 Joint Administrative Hearing

- a) When a proceeding is initiated under these rules, the Department and IDPH, jointly, shall notify the ICF or SNF of the intended action(s) and of the right to an administrative hearing, by serving a "Notice of Intent to Terminate (and Not Certify) and Right to Hearing". Notice, service and proof of service shall be in accordance with the "Rules of Practice For Medical Vendor Administrative Proceedings" (Sections 104.200-104.295).
- b) All hearings held pursuant to these rules shall be conducted by an attorney designated by the Director of the Department as a hearing officer and said hearing shall be conducted under the governed by the applicable Rules of Practice for Medical Vendor Administrative Proceedings promulgated by the Department.
- c) The hearing officer shall prepare a written report of the case which shall contain findings of fact and recommended decisions with regard to the issues of certification and participation in the Medicaid program. The Director of IDPH shall make a final determination regarding certification, which shall be in writing and forwarded to the Director of IDPA. The Director of the Department shall then make a final decision concerning participation in the Medicaid program, based on the findings of fact, the recommended decision and the final certification determination by IDPH. A final administrative decision shall be issued in writing and contain findings of fact and the final determinations concerning certification and participation in the Medicaid program. A copy of the decision shall be served on each party.

Section 104.330 Facilities Certified Under Both Medicare and Medicaid

- a) If a SNF is participating, or seeking to participate in both Medicare and Medicaid, and if the basis for denial, termination or non-renewal of certification and participation in Medicaid is also a basis for the denial, termination or non-renewal of participation in Medicare, the Department shall notify the facility that:
 - 1) The facility is entitled to the review procedures specified or referred to in 42 CFR 405, Subpart D, in lieu of the procedures specified or referred to in these rules; and
 - 2) A final decision entered under the Medicare review procedures shall be binding on the issue of certification for purposes of Medicaid participation.
- b) The Department of Public Aid may continue to seek to deny, suspend or terminate participation in the Medical Assistance Program on the basis of non-certification issues for facilities participating or seeking to participate under both Medicare and Medicaid, pursuant to 89 Ill. Adm. Code 140.14 and 140.16.

(Source: Amended at 15 Ill. Reg. 6557, effective April 30, 1991)

SUBPART E: FOOD STAMP ADMINISTRATIVE DISQUALIFICATION HEARINGS**Section 104.400 Suspected Intentional Violation of the Program**

If the documentation supports the claim of intentional violation of the program, the Department shall send the individual a notice of suspected intentional violation of the program and of the opportunity to waive the administrative disqualification hearing. Examples of such documentation include statements made by a household member on his application, statements made by a household member and recorded in his case record by the caseworker, and statements made by an employer indicating employment of a household member which conflicts with information on the household member's application. Based upon an evaluation of the facts, the Department may refer cases of suspected intentional violation of the program to a court of appropriate jurisdiction for prosecution (See 89 Ill. Adm. Code 121.154). Factors considered by the Department in its evaluation include the dollar amount at issue, evidence of wilful intent to defraud, and the weight of the evidence.

(Source: Amended at 8 Ill. Reg. 5274, effective April 9, 1984)

Section 104.410 Advance Notice of Administrative Disqualification Hearing

The Department shall provide written notice to a household member suspected of intentional violation of the Food Stamp program at least 30 calendar days in advance of the date an administrative disqualification hearing has been scheduled. The notice shall contain:

- a) The date, time and place of hearing.
- b) The charge(s) against the household member.
- c) A summary of the evidence and how and where it can be examined.
- d) A warning that the decision will be based solely on information provided by the Food Stamp office if the household member fails to appear.
- e) A statement that the household member or representative will have 10 calendar days from the date of the hearing to present good cause for failure to appear in order to receive a new hearing. (See 89 Ill. Adm. Code 104.60(e) for definition of good cause).
- f) A warning that a determination of intentional violation of the program will result in a 6 month disqualification for the first violation, 12 month disqualification for the second violation, and a permanent disqualification for the third violation, and a statement of which penalty the Department believes is applicable to the case scheduled for hearing.
- g) A listing of the household member's rights. (See rights set forth in 89 Ill. Adm. Code 104.22).
- h) A statement that the hearing does not preclude a prosecution for civil or criminal fraud.
- i) A statement that the individual can call the Food Stamp office to get the name and phone number of someone who can give free legal advice.
- j) The household member is also sent a waiver of right to an Administrative Disqualification Hearing pursuant to 7 C.F.R. 273.16(f). If the household member wishes to waive the right to a hearing, he/she must sign the waiver and return it to the Department within 20 calendar days of the date of notification.

(Source: Amended at 8 Ill. Reg. 5274, effective April 9, 1984)

Section 104.420 Postponement of Hearing

The household member is entitled to one postponement of up to 30 calendar days. If the hearing is postponed, the 90 calendar day time limit for reaching a decision is to be extended for as many days as the hearing is postponed.

(Source: Amended at 8 Ill. Reg. 5274, effective April 9, 1984)

Section 104.430 Administrative Disqualification Hearing Procedures

- a) The Department is to conduct a hearing, arrive at a decision, and notify the household member and local office of the decision within 90 calendar days of the date the household member is notified in writing of the scheduling of an administrative disqualification hearing.
- b) The hearing shall be conducted by an impartial hearing official.
- c) The household has the same rights during an administrative disqualification hearing that it has during a fair hearing. (See 89 Ill. Adm. Code 104.22).
- d) The hearing procedures shall be published and made available to any interested party.

(Source: Amended at 8 Ill. Reg. 5274, effective April 9, 1984)

Section 104.440 Failure to Appear

If the household member or representative cannot be located or fails to appear at the scheduled hearing without good cause, the hearing is to be conducted without the household member represented. Even though the household member is not represented, the hearing official is required to consider the evidence and determine if an intentional violation of the program was committed based on clear and convincing evidence. If a determination of intentional violation of the program is made, the member has 10 calendar days from the date of the scheduled hearing to present reasons showing good cause for failure to appear. (See 89 Ill. Adm. Code 104.60(e) for definition of good cause.) The hearing officer is to determine if the household member had good cause for not appearing and enter the good cause decision on the record. A new hearing is to be conducted if the good cause decision is in favor of the household member.

(Source: Amended at 8 Ill. Reg. 5274, effective April 9, 1984)

Section 104.450 Participation While Awaiting a Hearing

A pending administrative disqualification hearing is not to affect the individual's or the household's right to be certified and participate in the program. Eligibility and level of benefits are determined in the usual manner while the administrative disqualification hearing is pending. The household member suspected of intentional violation of the program is eligible until a hearing officer rules that the individual committed intentional violation of the program.

(Source: Amended at 8 Ill. Reg. 5274, effective April 9, 1984)

Section 104.460 Consolidation of Administrative Disqualification Hearing with Fair Hearing

A fair hearing and an administrative disqualification hearing may be combined into a single hearing if the factual issues arise out of the same, or related, circumstances and the household received prior notice that the hearings will be combined. If a single hearing is held, the timeliness standards for administrative disqualification hearing, as set out in 89 Ill. Adm. Code 104, Subpart E, Food Stamp Administrative Disqualification Hearings, shall be followed.

(Source: Amended at 8 Ill. Reg. 5274, effective April 9, 1984)

Section 104.470 Administrative Disqualification Hearing Decision and Notice of Decision

- a) The hearing officer shall base the decision on whether there is clear and convincing evidence that the household member intentionally violated the program.
- b) If it is decided that the household member intentionally violated the program, he/she is sent a notice of the decision of the administrative disqualification hearing. The notice includes the decision and the reason for the decision.
- c) The Department notifies the household of the date the disqualification takes effect and the status of remaining eligible household members.
- d) If the hearing officer finds that the household member did not intentionally violate the program, the household member is sent a notice informing him that any overissuance received by that household will be collected through an unintentional household error claim by the Department.

(Source: Amended at 8 Ill. Reg. 5274, effective April 9, 1984)

Section 104.480 Appeal Procedure

No further administrative appeal procedure exists after a finding of intentional violation of the program by an administrative disqualification hearing or after a household member signs a waiver of right to an administrative disqualification hearing. A fair hearing decision cannot reverse a disqualification decision. However, a household member is entitled to seek relief in a court having appropriate jurisdiction.

(Source: Amended at 8 Ill. Reg. 5274, effective April 9, 1984)

SUBPART F: INCORPORATION BY REFERENCE

Section 104.800 Incorporation by Reference

Any rules or regulations of an agency of the United States or of a nationally recognized organization or association that are incorporated by reference in this Part are incorporated as of the date specified, and do not include any later amendments or editions.

(Source: Added at 13 Ill. Reg. 3944, effective March 10, 1989)